

Message Text

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C O N F I D E N T I A L STATE 141990

FOR USDEL TO LOS CONFERENCE

FOLLOWING TELEGRAM FROM SECSTATE WASHDC DATED JULY 1, 1974
SENT MOSCOW INFO GENEVA, USUN NEW YORK, MEXICO IS REPEATED
TO YOU: QUOTE

C O N F I D E N T I A L STATE 141990

TOSEC 211

E.O. 11652: GDS

TAGS: UNCTAD

SUBJ: UNCTAD CHARTER OF ECONOMIC RIGHTS AND DUTIES OF
STATES

TO THE SECRETARY FROM CARLYLE E. MAW

1. I TALKED FULLY WITH FONSEC RABASA ON ARRIVAL IN
MEXICO JUNE 26. EMPHASIZING CONSTRUCTIVE APPROACH OF
USG, I SUGGESTED BEST HOPE OF AGREEMENT AT MEXICO CITY
ON COMPLETE DRAFT OF CHARTER WAS TO OMIT CERTAIN CON-
TROVERSIAL OR UNNECESSARY SUBJECTS, SUCH AS PRODUCERS
CARTELS AND LAW OF SEA, AND TO STRIKE GENUINE COMPROMISE
ON REMAINDER, NOTABLY NATIONALIZATION AND MULTINATIONAL
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CORPORATIONS. THE OTHER VEXED QUESTIONS OF NON-DISCRIMINA-

TION AND MFN SHOWED SIGNS OF AGREEMENT, SINCE EUROPEANS HAD ACCEPTED COMPROMISE FORMULA PROPOSED BY AMB BRILLANTES OF PHILIPPINES; IT WAS UP TO MEXICO AND OTHERS OF GROUP OF 77 TO MOVE THE USSR. I PASSED RABASA WHAT WE AND OTHER INDUSTRIALIZED STATES REGARDED AS A REASONABLE COMPROMISE ON NATIONALIZATION AND MNCS. RABASA SEEMED MOLLIFIED AND APPRECIATIVE AND TURNED NEGOTIATIONS OVER TO HIS COLLEAGUES. WE HAMMERED OUT A TEXT WHICH RABASA APPROVED JUNE 27. IT PROVIDED FOR JUST COMPENSATION

FOR FOREIGN NATIONALIZED PROPERTY AND SUBJECTED BOTH NATIONALIZATION AND TREATMENT OF MNCS TO PERFORMANCE BY A STATE OF ITS INTERNATIONAL OBLIGATIONS.

2. BRILLANTES WAS PERSUADED TO INTRODUCE THIS TEXT AS HIS OWN. HOWEVER, IN DOING SO HE MADE A VITAL CHANGE OF THE PHRASE "INTERNATIONAL OBLIGATIONS" TO "INTERNATIONAL COMMITMENTS OR UNDERTAKINGS", WHICH APPEARS TO CONFINE THE RELEVANT INTERNATIONAL OBLIGATIONS OF A STATE TO TREATIES AND EXCLUDE CUSTOMARY INTERNATIONAL LAW. THE DEVELOPED COUNTRIES IN MEXICO WERE UNWILLING TO ACCEPT THIS CHANGE BUT OTHERWISE WERE EXTREMELY PLEASED WITH THE BRILLANTES FORMULA.

3. GROUP OF 77 WAS THROWN INTO DISARRAY BY BRILLANTES INTRODUCTION OF HIS FORMULA. WHILE THE DEVELOPED COUNTRIES WERE IN THE HAPPY POSTURE OF ACCEPTING IT AS A BASIS OF NEGOTIATION AND OF PRESSING FOR AGREEMENT ON THE CHARTER AS A WHOLE, GROUP OF 77 MAINTAINED THAT THERE WAS INSUFFICIENT TIME BEFORE ADJOURNMENT TO GET FRESH INSTRUCTIONS WHICH WOULD ALLOW NEGOTIATIONS ON THE BASIS OF THE BRILLANTES FORMULA.

4. RESULT WAS THAT OTHER PORTIONS OF CHARTER WHICH MIGHT HAVE BEEN SETTLED IF NATIONALIZATION-MNC ISSUES HAD BEEN WERE ALSO LEFT UNRESOLVED. IT WAS AGREED THAT CONSULTATIONS AMONG ALL MEMBERS OF THE WORKING GROUP THAT WISH TO TAKE PART WILL RESUME IN GENEVA THE FIRST WEEK OF SEPTEMBER, WHILE UNCTAD BOARD IS MTG. THE BOARD IS EMPOWERED TO ELABORATE THE CHARTER'S DRAFT. THE HOPE IS CONFIDENTIAL

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THAT AGREEMENT WILL THEN INFORMALLY BE REACHED ON THE BASIS OF THE BRILLANTES DRAFT, SUITABLY REVISED, THAT OTHER OUTSTANDING ISSUES THEN WILL FALL INTO PLACE, AND THAT BOARD WILL REVISE THE CURRENT DRAFT SO AS TO SUBMIT A COMPLETE TEXT TO THE UNGA.

5. MEXICANS NATURALLY WOULD HAVE PREFERRED TO COMPLETE THE DRAFT IN MEXICO. BUT THEY HAVE PUT A GOOD FACE ON

COMPLETING 75 OF IT. MOREOVER, MEXICANS AND OTHER MODERATE LDCS SEEM CONVINCED OF OUR FLEXIBILITY. IN CLOSING DAYS OF SESSION, FAR FROM BLAME FOR FAILURE TO COMPLETE THE DRAFT BEING ATTRIBUTED TO USG, THESE WAS HARDLY A WORD OF CRITICISM OF US. RABASA'S PRESS STATEMENT AFTER MTG CALLED ON USG TO SHOW STILL GREATER FLEXIBILITY, BUT HE HAD TOLD ME THAT THIS WOULD BE DIRECTED TOWARDS MAINTAINING MEXICO'S PUBLIC IMAGE RATHER THAN ANY CRITICISM OF OUR POLICY. SISCO UNQUOTE SISCO

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